IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/09/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.8328 OF 2001

G. Anandan,
S/o. Govindan .. Petitioner

-Vs-

1. The Director General,
Apparel Export Promotion Council
(Sponsored by Ministry of Commerce
Government of India).
N.B.C.C. Tower,
No.15, Bhikaji Cama Place,
New Delhi 110 066.

2. The Joint Director(Personal),
Apparel Export Promotion Council,
(Sponsored by Ministry of Commerce
Government of India).
N.B.C.C. Tower,
No.15, Bhikaji Cama Place,
New Delhi 110 066.

3. The Director, (SR)
Apparel Export Promotion Council,
No.1, Indira Nagar, 3rd Street,
Murugam Balayam,
Bungalow Stop,
Anivashi Road, Tirupur -3. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. G. Justin

For Respondents : Mr.K.S. Natarajan for
M/s. Anand Dasgupta & Sagar

:J U D G M E NT

The petitioner was appointed as clerk-cum-typist under the third respondent. In the appointment order dated 21.2.1994 it was stated inter alia

" . . . After confirmation, your service may be terminated by giving one month's notice or one month's salary in lieu thereof or in case you desire to leave the services of the Council, you shall have to give one month's notice in writing. . . ."

After the petitioner had served for more than 6 years, he was transferred and directed to report at Kochi Office as per order dated 10.10.2000 and subsequently he was directed by letter dated 18.10.2000 to report for duty at Kochi within 2 days. At that stage, the petitioner issued notice tendering resignation from service. Even though the period of 30 days notice had not expired, the first respondent by order dated 14.11.2000 accepted the resignation and unilaterally relieved the petitioner from service. However, the petitioner submitted a further application dated 16.11.2000 seeking to withdraw his resignation. The petitioner was subsequently intimated by letter dated 24.11.2 000 that his request for withdrawal could not accepted as he had already been relieved from service on acceptance of the resignation. The petitioner has sought to quash such letter dated 24.11.2000 and prayed that he should be reinstated in service.

2. A counter affidavit has been filed on behalf of the respondents stating that since the petitioner's resignation had been accepted and had been communicated to him and he had been relieved, the question of withdrawal of resignation at the subsequent stage did not arise.

3. Learned counsel for the petitioner has contended that since as per the condition incorporated in the order of appointment resignation would be effective only after one month's notice in writing, the petitioner had every right to withdraw the resignation before completion of one month.

4. As against the aforesaid proposition, learned counsel for the respondents has pointed out that in his resignation letter itself, the petitioner had requested for being relieved as early as possible and it was further indicated " . . . In this regard, I have surrendered a one Month E.L. as applicable to my notice period". Learned counsel for the respondents has also referred to the service conditions as contained in Service Rules framed by the respondent No.1. Clause 17 of the said Rules is to the following effect :-

" C-17. After confirmation, unless otherwise agreed upon in the letter of appointment, an employee shall be at liberty to resign from the service of the Council at any time by giving the Council one month" s notice in writing of his desire to do so or on surrendering a month" s salary in lieu thereof subject to acceptance by the Competent Authority. However, this condition may be waived by the Director General in respect of Staff belonging to Groups C and D and by the Committee in respect of the Staff belonging to Groups A & B."

5. In the above background, the learned counsel for the respondents has contended and in my opinion with enough justification, that

the petitioner himself having clearly stated that he was surrendering EL.. equivalent to one month in lieu of notice period and such offer having been accepted, the question of withdrawal of resignation thereafter did not arise.
6. It is further noticed that as per clause 17 in respect of staff belonging to Groups C and D, the condition relating to one month's notice may be waived. Learned counsel has therefore rightly submitted that in any event since the resignation had been accepted even before expiry of 30 days, it should be assumed that such a condition had been waived.

7. Learned counsel for the petitioner has emphasised on the condition incorporated in the order of appointment relating to resignation by giving one month's notice. Such a condition in the letter of appointment has to be understood in the context of service conditions contained in the relevant service Rules and as per Clause 17, which had already been extracted, it is apparent that a person can offer to resign by surrendering one month's salary instead of giving one month's notice and in the present case, it was specifically so done by the petitioner.

8. Learned counsel for the petitioner has placed reliance upon the decision of the Supreme Court reported in 2002 (5) SCC 278 (K.L.E. SOCIETY v. DR.R.R. PATIL AND ANOTHER). In the said case, the rules provided for a minimum period of notice and before expiry of such minimum period, the offer for resignation had been accepted. It was therefore held that before expiry of such period, the employee had the option to withdraw the resignation. Such is not the case in the present case. As already indicated, as per the Rules, one month's notice would be curtailed by volunteering to give up one month's salary as has been precisely been done by the petitioner and the resignation had been accepted and he had been relieved. The aforesaid decision of the Supreme Court is not applicable to the facts and circumstances of the present case.

9. Learned counsel for the petitioner has also relied upon the decision of the Supreme Court reported in (2001)1 S.C.C. 158 equivalent to 2001(1) CTC 188 (UNION OF INDIA AND ANOTHER v. WING COMMANDER T. PARTHASARATHY). Learned counsel appearing for the respondents has also placed reliance upon the said decision. The principle of law decided in the said case is similar to the principle of law decided in 200 2(5) SCC 278 (cited supra), but in my opinion the said principle would not be applicable to the present case in view of the fact that in the present case rules contemplate of giving a lesser period of notice by offering to forego one month's salary. The basic fact remains that resignation had been accepted and the petitioner had been relieved before withdrawal letter was issued by him.

10. For the aforesaid reasons, I do not find any merit in the writ petition, which is accordingly dismissed without any order as to costs.

Index : Yes
Internet : Yes

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To

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